BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION OF THE CALPEAK – BORDER PROJECT BY CALPEAK POWER - BORDER, LLC,	**DOCKET NO. 01-EP-14 APPLICATION COMPLETED JUNE 20, 2001**

PROPOSED DECISION

The CalPeak - Border Project proposed by CalPeak Power – Border, LLC, has been the subject of a Committee hearing and subsequent analysis by the Energy Commission staff. The proposal meets Energy Commission criteria developed to implement the Governor's Executive Orders expediting the permit process for peaking and renewable energy generating plants. This Proposed Decision has been completed in an expedited timeframe as called out in the Executive Orders and is submitted for approval by the full Commission. As the Presiding Commissioner assigned to review this proposal, I hereby recommend certification of the Project under the limitations presented as conditions contained in this Proposed Decision and the Staff Assessment incorporated herein by reference.

Executive Orders

On January 17, 2001, the Governor proclaimed a State of Emergency due to constraints on electricity supplies in California. As a result, the Governor issued Executive Orders D-22-01, D-24-01, D-25-01, D-26-01, and D-28-01 to expedite the permitting of peaking and renewable power plants that can be on line by September 30, 2001, and provide power to California. Emergency projects are exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(4). Since the

Governor has declared a state of emergency, the Energy Commission may authorize the construction and use of generating facilities under terms and conditions designed to protect the public interest. (Public Resources Code section 25705.)

Project Description

Applicant CalPeak Power - Border, LLC, ("Applicant") proposes to construct a 49.5 megawatt ("MW") electricity generating facility utilizing one FT8 Pratt & Whitney Twinpac gas-fired turbine system consisting of two engines connected to a common generator. The proposed facility will be located in a 5.6-acre parcel within an industrial development area of the Otay Mesa section of the City of San Diego. Approximately 1,700 feet of transmission line will be constructed between the facility and an existing major San Diego Gas & Electric ("SDG&E") corridor that connects to the nearby SDG&E Border Substation. SDG&E will construct approximately 780 feet of 8-inch underground natural gas pipeline between the proposed facility and an existing SDG&E gas line.

The CalPeak - Border Project ("the Project") is expected to begin commercial operation by September 30, 2001. Applicant has obtained a preliminary Authority To Construct permit from the San Diego County Air Pollution Control District ("SDAPCD" or "Air District") which will be finalized upon the Commission's approval of the application. The Project is designed to operate up to 8,760 hours per year, i.e. 24 hours per day, seven days per week. Applicant expects to operate 24 hours per day most summer days and less frequently in winter[1].

Applicant has a verbal agreement with the California Department of Water Resources ("DWR") to sell the power generated by the Project under a minimum 10-year power purchase agreement. Subsequent to the informational hearing, Applicant advised that the power purchase agreement with DWR is expected to be finalized in the second or third week of July 2001[2].

[1] Application, sections 1.2 and 1.7.
[2] July 5, 2001, email from Charles Hinckley, Project Director, CalPeak Power.

In order to qualify for the Energy Commission's expedited review, the Project must begin commercial operation by September 30, 2001. Project construction will take approximately two to three months to complete and will begin upon Commission approval of the application.

Public Hearing

On June 28, 2001, Robert A. Laurie, the Commissioner designated to conduct proceedings on this proposal, held an informational hearing in Chula Vista to discuss the Project with governmental agencies, community organizations, and members of the public. At the hearing, the Applicant described the Project and Energy Commission staff explained the expedited review process for emergency permits. Michael Meacham, Special Operations Manager, and Willie Gaters, Environmental Resource Manager, City of Chula Vista, were present. Diana Arellano represented Congressman Bob Filner. Gerri Stryker represented the California Environmental Protection Agency, San Diego Region. Marielena Castellanos represented the City of San Diego Mayor's Office. Local residents and other members of the public made comments and had the opportunity to ask questions about the Project. See **Public Comment** section.

Issues of Concern

The Energy Commission Staff Assessment was received into the record on July 6, 2001. The following issues were identified at the hearing and during the review and consideration period that followed.

Natural Gas Supply

The Project will use an estimated 1,000 Mmbtu/hr of pipeline quality natural gas supplied via a new 8-inch natural gas pipeline to be constructed by SDG&E along the site access roadway easement. The pipeline will be designed and operated in

compliance with all applicable codes, which will reduce to insignificant levels any risk of public impact resulting from accidental release.

Natural gas will not be stored at the site but will be handled in significant quantities. The Staff Assessment concluded that compliance with all applicable engineering design codes and fire protection codes will virtually preclude any detrimental public impact from natural gas handling at the Project.

Air Quality

At the informational hearing residents expressed concerns regarding the cumulative impacts from the existing, under-construction, and proposed plants in the Otay Mesa area. Particular reservations were expressed with regard to use of liquid fuels at the South Bay Plant and the new Larkspur peaker plant during periods of natural gas shortages, such as the 13 days in December 2000 and January 2001 when fuel oil was burned at the South Bay Plant. See **Public Comment** section, paragraphs 1, 4, 6, and 7.

The Air District analyzed the air quality impacts of the Project and performed an expanded consideration of the cumulative results from all existing and proposed power plants including the existing South Bay Plant, the planned 510 MW Otay Mesa facility, plus five small plants built or planned for the region. The Air District explored a worst-case scenario that postulated natural gas shortages causing the South Bay Plant to operate 33 percent on fuel oil, and both the RAMCO Chula Vista and Larkspur-Otay Mesa plants to run one turbine on fuel oil. The Air District determined that even in that scenario California and Federal standards for CO, SO_2, NO_2, and PM_{10} would not be exceeded.

At the informational hearing[3] Applicant described the Project's dry low NOx combustion system as the latest generation of technology that allows the actual combustion process

[3] Presentation by Charles Hinckley and Glen Sampson at the June 28, 2001, public hearing.

to produce the lowest possible level of emissions. The Selective Catalytic Reduction ("SCR") system will further control NOx to 2 ppm annually, and the carbon monoxide catalyst will significantly reduce carbon monoxide levels. Applicant noted that the Project would not require reduction credits, but sulfur dioxide trading allowances will be purchased.

The Staff Assessment concluded that the proposed Selective Catalytic Reduction is the best available control technology (BACT). The proposed NO_x emission rate is 2 ppm on an annual basis, which is lower than the 5 ppm allowed with SCR and among the lowest emission ratings available. Carbon Monoxide (CO) emissions will be maintained at 6 ppm, and particulate matter smaller than 10 microns (PM_{10}) will be at 3.33 lb/MMcf, approximately 50 percent of the allowable rate. The Staff Assessment noted that these conditions are stated in the Air District's preliminary Authority to Construct permit.

To insure compliance with air quality standards, continuous emission monitoring systems must be in place and the results reported on a regular basis. Conditions of Compliance **AQ-2,** and **AQ-3** require compliance with Air District conditions for construction and operation of a power plant. Staff has proposed Condition of Certification **AQ-1,** which requires Applicant to limit fugitive dust emissions and other impacts during construction and employ mitigation measures where appropriate.

Noise

The Project site is within an industrial development area of light industry, warehouses, and undeveloped open space. The Wildflower power plant, which is adjacent to San Diego Gas & Electric's Border Substation, is north of the proposed site. Other noise sources in the vicinity include traffic from nearby roadways, such as State Route 950.

The nearest sensitive receptors are three single-family residences on Otay Mesa Road approximately 3,000 feet northeast of the project site. The three residences are separated from the Project site by intervening rows of industrial buildings on the east

side of Sanyo Avenue. Although the Project site is within city limits, the residences are in San Diego County.

The City of San Diego Noise Ordinance, Section 59.5.0401, establishes property line sound level limits for various land use zones. The limit for a location on a boundary between two zoning districts is the arithmetic mean of the respective limits for the two districts. The most conservative residential standards provide a maximum of 50 dBA at the property line from 7 a.m. to 7 p.m., 45 dBA from 7 p.m. to 10 p.m., and 40 dBA from 10 p.m. to 7 a.m. Because the three nearby residences are in a mixed-use designation adjacent to land zoned for industrial development, the applicable standards are 62.5 dBA, 60 dBA, and 57.5 dBA, respectively, for the identified time periods.

Because the three residences are located within San Diego County, staff also considered County ordinance limits for residential properties within Specific Plan Zone S-88. The County ordinance provides that the 1-hour average sound level shall not exceed 62.5 dBA between 7:00 a.m. to 10:00 p.m., or 60 dBA between 10:00 p.m. to 7:00 a.m. The Staff Assessment recommends application of the more conservative City standards because the noise-generating source, the Project, is within the City's jurisdiction.

On an afternoon in May 2001, the ambient noise level at the closest of the three residences was measured at approximately 61dBA. The noise level on the Project site was 63 dBA, primarily from traffic on State Route 905. Due to distance and intervening buildings, Project noise at the nearest residential boundary is expected to attenuate to less than 40 dBA, which would not significantly increase existing noise levels. That level is consistent with the City ordinance, and is therefore considered not significant.

For all industrial land uses the threshold City noise limit at the property line at any time is 75 dBA. Most of the Project equipment will be located within enclosures with exhaust and intake silencers. The facility is expected to generate an average sound level of approximately 60 dBA at the northern property boundary, 62 dBA at the western

boundary, 57 dBA at the eastern boundary, and 73 dBA at the southern boundary. The expected noise levels would comply with the City industrial zone noise limit of 75 dBA.

During construction Section 59.5.0404 of the City ordinance will apply. That provision limits combined noise levels, as well as hours and days of operation of construction equipment. Grading and pipeline work will create the highest noise levels, but nonetheless would comply with City requirements. Staff assumed that nighttime construction would occur, and has provided Condition of Certification **NOISE-4** to address potential impacts.

Condition of Certification **NOISE-1** requires that Applicant monitor actual Project noise contribution at the property line of the nearest residence, and use mitigation measures if specified levels are exceeded. Conditions of Certification **NOISE-2** and **NOISE-3** require notification to local residents prior to construction and that Applicant document, investigate and mitigate noise impacts. With the implementation of the Conditions of Certification identified in the Staff Assessment the Project will not result in a significant noise impacts to nearby residents or others.

Water Supply and Consumption; Wastewater

The Project will use approximately 10-gpm of water at peak use for evaporative cooling only when the ambient air temperature exceeds 80 degrees Fahrenheit. At the informational hearing Applicant described that rate as approximately the same usage as a typical home[4]. Water will be supplied by the Otay Water District, which has provided a "Will Serve" letter stating it can meet the Project's needs. Water will be stored in a 47,000-gallon tank on site, and treated by a portable demineralization system before use.

Process wastewater will be filtered and reused in the evaporative cooler; the Project will not discharge any wastewater to a sewer system. Wastewater generated by the

[4] Presentation by Charles Hinckley at the June 28, 2001, public hearing.

demineralization process will be disposed of by the contractor supplying the system. Wastewater from equipment wash down will be pumped to a storage area, then collected by a tank truck for disposal at an appropriate facility. No sanitary sewage service will be required.

The Project will require a National Pollution Discharge Elimination System ("NPDES") permit to address Storm Water Runoff from Construction Activities. Part of the NPDES permitting process is the submission to the Regional Water Quality Control Board ("RWQCB"), of a Notice of Intent application and the development of a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP will include an erosion control and stormwater management plan that identifies Best Management Practices ("BMPs") to be implemented during construction activities.

A NPDES permit for Storm Water Discharges Associated with Industrial Activities would not be required based on the activity occurring at the site. However, to comply with the California Regional Water Quality Board, San Diego Region, Order No. 2001-01, the City of San Diego is reviewing construction plans as well as operations in order to insure that stormwater discharges standards will be met.

Land Use

The Project site is in the planned Otay Mesa Development District, one of the City's largest industrial areas. Major utilities and services, including central electric plants and public utility electric substations, are specifically permitted in the district by San Diego Municipal Code §103.1103(a)(7). The Project is not located within the Brown Field Airport Influence Area, and 50-foot stack proposed for the Project will not exceed any height restriction. To the north of the site the Wildflower power plant facility is currently under construction. Directly to the south of the Wildflower facility are SDG&E's Border Substation and gas regulator station.

The Applicant has indicated that all local, state and federal land use requirements would be met. This would be assured by the imposition of Conditions of Certification **LAND-1**,

which would require that all applicable laws, ordinances, regulations and standards have been met. With implementation of the Conditions of Certification identified in the Staff Assessment the project's impact on land use would be insignificant.

Biological Resources

The 5.6-acre proposed site has historically been used for agricultural production but has been fallow for several years, and is characterized by barren soil and non-native plant species. The transmission line corridor spans 1700 feet and consists of non-native grassland, disturbed wetland, and fallow field. The natural gas pipeline and water line also occur within fallow field. The proposed site and the transmission line corridor include non-native grassland which provides foraging habitat for raptors and other wildlife, and typically requires mitigation for its loss in San Diego County. Impacts to non-native grassland include the removal of 0.4 acres at the facility siting location, and approximately 0.01 acres on the transmission line corridor.

A May 18, 2001, site visit identified the San Diego County viguiera, a California Native Plant Society List 4 species at the intersection of Old Otay Mesa Road and Sanyo Road, but Applicant has no plans to construct in that location. The US Fish & Wildlife Service ("USFWS") has designated critical habitat for the Otay Tarplant approximately 1.5 miles to the east of the site, but this species was not observed during site surveys.

Thirty-four sensitive wildlife species were evaluated but considered to have no to low potential for occurrence on the site. Commission staff noted four additional sensitive species located within the area, however, suitable habitat is not present for any of these species. The Quino checkerspot butterfly and its habitat are not present, although habitat does exist within southern San Diego County. The USFWS is concerned with nitrogen deposition from power plant emissions fertilizing the growth of weedy plant species at the exclusion of the checkerspot host plant species. The Applicant and the USFWS are currently in consultation regarding this issue.

CDFG biologists have expressed concern that appropriate surveys were not conducted for nesting sensitive bird species, including raptors, and recommends conducting surveys 300 feet around the project site. These surveys should document suitable nesting trees, and focus on potential nesting habitat for sensitive species such as Northern harrier and Least Bell's Vireo.

In accordance with the San Diego Municipal Land Development Code Biological Guidelines for developing on Environmentally Sensitive Lands, Applicant has proposed mitigation for the loss of non-native grassland of 0.4 acres for the generating site. The CDFG has requested that non-native grassland loss from the placement of any transmission line poles also be included in the total acreage considered for mitigation. Implementation of Condition of Certification **BIO-7** ensures that Applicant will submit a report of any impacted sensitive habitat to the Compliance Project Manager for review and approval prior to operations.

The CDFG requested surveys for nesting sensitive bird species, which will allow identification of potential arboreal and/or ground nesting species, including the harrier and Least Bell's Vireo. Implementation of Condition of Certification **BIO-8** will ensure that a qualified biologist conducts such surveys prior to project-related activities.

The Applicant has proposed no mitigation for wetlands. Commission Staff, the City of San Diego, and CDFG are concerned with potential indirect impacts from stormwater runoff during construction and operation. City Biological Guidelines recommend a minimum 100 foot buffer adjacent to all wetlands, to be increased or decreased on a case-by-case basis in consultation with the CDFG, the USFWS, and the Army Corp of Engineers. Condition of Certification **BIO-9** will require that the project biologist flag buffers prior to site mobilization, and be present on site during construction as necessary.

Hazardous Materials

The Project will use aqueous ammonia for control of NO_x emissions in the SCR system. The aqueous ammonia will be stored in a 12,000 tank with 110 percent full containment below the tank. The use of aqueous ammonia precludes any potential for significant impact at the nearest residences, which are approximately 3000 feet from the proposed project. The Staff Assessment also concluded that the probability of serious impacts from an accidental release are insignificant at the adjacent light industrial and commercial properties. Implementation of the Conditions of Certification in the Staff Assessment will assure proper handling of hazardous materials associated with the Project.

Public Comment

1. Michael Lake, Chief, Engineering Division, San Diego County Air Pollution Control District, described his agency's role in the permitting process. The Air District examines applications to assure compliance with relevant air quality laws and regulations and protection of public health. The Air District evaluated Applicant's Project and concluded that it meets all relevant rules and regulations and employs the Best Available Control Technology ("BACT"). Mr. Lake responded to various questions from members of the public as discussed in the following paragraphs.

2. Brad Thornberg represented the site owner, CIF Holdings. He asked how minor changes, such as a shift in the location of an access road, would be handled. Staff advised that any proposed modification of information in the application would be evaluated, and significant changes would require an amendment. Mr. Thornberg commented that CIF Holdings supports the Project, and considers it beneficial to the development of an industrial base that will retain employers and manufacturers in California.

3. Wayne Dickey, Otay Mesa/Nestor Community Planning Group, posed questions regarding security. Applicant explained that the Project would be an unmanned facility with 24-hour video surveillance monitored at a central station. The Project site, including the roadway approach, will be enclosed by a 7-foot fence.

4. Resident Pepper Coffey questioned the need for a peaker plant when two area base load plants will soon be available. Applicant replied that it was responding to a need in the California energy market. Applicant opined that 30 percent of California generation facilities are over 40 years old, and can be economically replaced by both base load and peaker plants such as the Project. Ms. Coffey commented that in contrast to the three tons of pollution emitted daily by the South Bay Power Plant, the Project's low emission levels should be the standard for all facilities.

Ms. Coffey stated that natural gas supplies are being diverted to peaker plants, and another such facility adds an additional relatively inefficient natural gas user, as compared to production by larger natural gas and combined-cycle plants. She opined that peaker facilities use two to three times as much natural gas as the Otay Mesa or rebuilt South Bay plants, which generate a comparable amount of electricity. Ms. Coffey concluded that the peaker plant process has stripped cities of their police powers that they can use to protect the health of residents.

5. Resident Lupita Jimenez asked about Project water use and discharge. Applicant described that water will be needed only on hot summer days, when approximately ten gallons per minute will be used to cool combustion air for greater turbine efficiency. Unlike conventional peaker plants the Project does not employ water injection, steam injection, or a cooling tower. Because all water will be evaporated or collected and reused, no discharges into the sewer system or the bay will occur. In response to Ms. Jimenez' questions Applicant advised that its capitol investment in the Project will total approximately thirty million dollars. Applicant is also building power plants in Otay Mesa, Mission Valley, El Cajon, and Escondido.

6. Michael Meacham, Special Operations Manager of the City of Chula Vista, asked about compliance with applicable local laws, ordinances, regulations, and standards ("LORS"). Staff advised that the Compliance Project Manager and Chief Building Officer work with local agencies to insure compliance with LORS. Staff Counsel observed that the Governor's Executive Orders do not waive LORS requirements.

Mr. Meacham stated that the City of Chula Vista is concerned in general about the proliferation of power plants in the Otay Valley region. However, the emission control system Applicant has proposed is very impressive and the City is reassured that the facility can meet air standards. Mr. Meacham suggested that the Energy Commission reconsider its previous approval of permits for other plants to require equivalent emission control systems.

Mr. Meacham asked if the Air District employs a threshold number in its modeling for the Otay Valley or a single County standard. Mr. Lake responded that there is no specific threshold for the Otay Valley. He noted that if all the approved and proposed small power plants were operating at full load on the same day, they would emit less than one ton per day of NOx, a very small percentage of overall regional emissions. Mr. Meacham commented on various questions from members of the public and answers provided by the Air District and Energy Commission staff as discussed in the following paragraphs.

7. Resident Holly Duncan expressed concern that Project documents were not available on line. Staff noted that the application and related documents had been available on the Energy Commission website since June 20, 2001.

Ms. Duncan asked whether city or county noise standards were applicable. Although the facility itself is within city limits, the nearest residences are in the county. Applicant stated that the noise level at the nearest residence would be 40 dBA, which meets both the county and city ordinances. The Project turbines will be enclosed in a soundproof building; and the exhaust will be routed through the selective catalytic reducer and

stack, which are designed to minimize noise. Staff noted that within 30 days of full certification Applicant would be required to undertake a 25-hour noise study and provide mitigation if noise standards are exceeded.

Ms. Duncan posed several questions about cumulative emissions. Mr. Lake stated that the Air District has studied the effects of the area's new and existing power facilities, and determined that even cumulatively the plants comply with all air quality and public health standards. More complex scenarios, including the cumulative impact of the Larkspur plant burning oil while all other plants operated at full load on gas, were investigated. That situation also would meet all standards for ambient air quality and public health protection. The Air District also modeled the hypothetical situation of the South Bay and Larkspur Plants burning oil, while the other facilities were at full load on gas. Even in that circumstance, no Federal or State ambient air quality standards would be exceeded. Ms. Duncan opined that there is not enough natural gas for existing power plants, and expressed concern about plants burning oil.

Ms. Duncan asked if the Air District's modeling tool was validated and developed in a regulated environment. Mr. Lake observed that the models employed by the Air District have been in use for a long time, and have been validated by the Federal Environmental Protection Agency. The tools can model air quality impacts from all types of sources, irrespective of the language of regulations, by considering emission rates, stack height, meteorology, background levels, et cetera.

Ms. Duncan stated that all fossil fuel plants should be denied permits because of the risks to public health, including the epidemic of asthma, and the harm to air quality and the environment.

8. Carson Pay represented MTS Financial Group. His written statement opined that the proposed Project would be good for small businesses because it provides economic stability.

9. Kurt Crosswhite represented the United Association of Plumbers and Pipefitters. He observed that the Project would add power to the grid, and allow interruption of operations at older plants to complete emission control improvements. Mr. Crosswhite observed that if power plants were built across the border no environmental standards would apply.

10. Willie Gaters, Environmental Resource Manager of the City of Chula Vista, presented a written statement that commended Applicant for proposing a Project which will be cleaner than other peaker plants. His statement noted that the expedited siting of peaker plants has stabilized the energy crisis, and now the Energy Commission should emphasize more fuel efficient power generation sources than simple-cycle plants.

In addition to the 510 MW Otay Mesa Plant and 706 MW South Bay Plant, there are now three peaker plants and five generating units proposed in the Otay Mesa area. The City of Chula Vista is concerned about the cumulative air quality impact of the number of facilities and use of alternative fuels when natural gas supplies are insufficient. The written statement concluded with the suggestion that the Energy Commission consider permitting the Project under its regular certification process to permit verification of power needs and greater local input.

11. Barbara King for the Coalition for Affordable Public Power asked how many jobs the Project would provide. Applicant stated that twenty people are employed at its San Diego maintenance facility, from which the facility will be remotely operated and monitored. In response to Ms. King's questions Applicant advised that it has a 10-year fixed-price contract with the Department of Water Resources. Ms. King quoted Franklin Roosevelt, and opined that it is difficult for citizens to understand the permit process.

12. Resident Marie Hueltz asked if Applicant planned to sell any of the energy overseas. Applicant replied that the Project would provide the majority of its output to

the State of California, and that it had no intention of selling any of the power outside the state.

13. Dale Fredricks, an owner of Applicant, stated that throughout the world energy companies operate peaker plants to respond to fluctuations in electrical demand. He considers the proposed Project to be as efficient and clean a plant as could be found anywhere. Mr. Fredricks disputed the comment that peaker plants are three times more inefficient than a base load plant, and observed that the Project is within 25-30 percent of the largest, most efficient, base load plants. He did agree that some of the old plants still operating in San Diego County are very inefficient. Applicant stated that the Project is two to three times as efficient as a base load plant, and such clean efficient peakers have an important role in the California electric generation resource mix.

14. Eugene Mitchell, Vice-President for Public Policy of the San Diego Chamber of Commerce, presented a written statement that addressed the region's increased demand for electricity. His letter stated that building additional generation capacity is essential, and that the Chamber supports the Project.

Staff Assessment

On July 6, 2001, Energy Commission staff issued its Staff Assessment, which is attached hereto and incorporated herein by reference. Staff conducted a "fatal flaw" analysis and found no areas of major concern related to the Project.

All conditions contained in the Staff Assessment are hereby adopted as the Conditions of Certification for the CalPeak - Border Project.

Authority to Construct Permit

Analysis of the air quality impacts of emergency permit applications is performed by the California Air Resources Board and the local Air District. Applicant filed an application

for an Authority to Construct permit with the Air District and it was deemed complete. The thirty-day notice and public comment period ended June 24, 2001.

The Authority to Construct permit is a requirement of the U.S. Environmental Protection Agency (USEPA). The Air District issued a preliminary Authority to Construct permit which will be finalized upon the Commission's approval of the application. All conditions contained in the Authority To Construct permit are incorporated herein by reference.

TERMS OF CERTIFICATION AND PERMIT VERIFICATION

All conditions contained in the Staff Assessment are hereby adopted as the Conditions of Certification for the CalPeak - Border Project.

The CalPeak - Border Project is a simple-cycle project that will operate during periods of high demand, and is designed to operate up to 8,760 per year. Construction will begin upon certification by the Energy Commission and issuance of the Authority to Construct permit by the Air District. Project construction will take approximately two to three months. The Project is expected to begin commercial operation September 30, 2001.

The Project shall be certified for the length of Applicant's power purchase agreement with the Calfornia Department of Water Resources. If, at the end of its power purchase agreement with DWR, the Project owner can verify that the Project complies with the following continuation conditions the Energy Commission shall extend the certification:

Verification: At least six months prior to the expiration of its power purchase agreement with the DWR, the Project owner shall provide verification that the Project will meet the following criteria:

1. The project is permanent, rather than temporary or mobile in nature.
2. The project owner demonstrates site control.

3. The project owner has secured any necessary permanent Emission Reduction Credits ("ERCs") approved by the Air District and the California Air Resources Control Board ("CARB"). The ERCs must be adequate to fully offset project emissions for its projected run hours and must have been in place prior to the expiration of the temporary ERCs obtained from CARB if temporary ERCs were used for the initial operation of the project.
4. The project is in current compliance with all Energy Commission permit conditions specified in this Decision.
5. The project is in current compliance with all conditions contained in the Authority To Construct permit from the Air District.
6. The project meets all Best Available Control Technology ("BACT") requirements under Air District rules as established in the Authority To Construct permit, and all CARB requirements.

The certification shall expire if the Project cannot meet the continuation criteria.

FINDINGS AND CONCLUSIONS

1. There is an energy supply emergency in California.
2. All reasonable conservation, allocation, and service restriction measures may not alleviate the energy supply emergency.
3. Public Resource Code section 21080(b)(4) exempts emergency projects from the requirements of the California Environmental Quality Act.
4. Executive Order D-28-01 states that "[a]II proposals processed pursuant to Public Resources Code section 25705 and Executive Order D-26-01 or this order [D-28-01] shall be considered emergency projects under Public Resources Code section 21080(b)(4)."
5. The CalPeak - Border Project is a simple-cycle facility that will operate during periods of high demand.

6. The Application for Certification for the CalPeak - Border Project has been processed pursuant to Public Resource Code section 25705 and Executive Orders D-26-01 and D-28-01.
7. Pursuant to the Executive Orders cited above, the CalPeak - Border Project must be on line no later than September 30, 2001, in order to help reduce blackouts and other adverse consequences of the energy supply emergency in the state.
8. In order for the CalPeak - Border Project to be on line by no later than September 30, 2001, it is necessary to substantially reduce the time available to analyze the Project.
9. To the greatest extent feasible under the circumstances, the terms and conditions specified in this Decision (1) provide for construction and operation that does not threaten the public health and safety, (2) provide for reliable operation, and (3) reduce and eliminate significant adverse environmental impacts.

Recommendation

Having heard the presentations and reviewed the record in this proceeding, I believe that, with the mitigation identified in (1) the Application as amended, (2) the Conditions of Certification identified in the Staff Assessment, (3) the Authority to Construct permit, and (4) as otherwise described in the record, the proposed facility will be designed, sited, and operated in a safe and reliable manner to protect the public interest. Therefore, I recommend that the Energy Commission adopt this Proposed Decision and certify the CalPeak - Border Project as described in this proceeding.

Monitoring Conditions

The Project owner shall comply with the following monitoring conditions in addition to the Permit Verification process contained in this Decision and in addition to the General

Compliance Conditions delineated in the Staff Assessment and incorporated herein by reference:

Start of Operations: The CalPeak - Border Project shall be on line by no later than September 30, 2001. If the CalPeak - Border Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the Project owner failed to proceed with due diligence to have the CalPeak - Border Project in operation by September 30, 2001, the Applicant shall forfeit its certification.

BACT Standards: Operation of the CalPeak - Border Project shall be in compliance with all Best Available Control Technology (BACT) standards imposed by the San Diego County Air Pollution Control District in its Authority to Construct permit. Failure to meet these standards will result in a finding that the CalPeak - Border Project is out of compliance with the certification.

Three-Year Review: No later than 15 days after completion of the first three years in operation, the owner of the CalPeak - Border Project shall submit to the Energy Commission a report of operations that includes a review of the Project's compliance with the terms and conditions of certification, the number of hours in operation, and the demand for power from the facility during the three-year period.

Dated this 9th day of July 2001, at Sacramento, California.

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Robert A. Laurie, Presiding Commissioner,